

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MIDDLE EAST FORUM

Plaintiff,

v.

LISA REYNOLDS-BARBOUNIS

Defendants.

Civil Action No. 2:19-cv-05697-JS

Defendant, Lisa Barbounis (“Ms. Barbounis” or “Defendant”) hereby presents the within Motion in Limine to preclude Plaintiff, Middle East Forum (“MEF” or “Plaintiff”) from claiming trade secrets protections for information that is available on public websites and can be accessed by anyone with an internet connection or smart phone.

I. INTRODUCTION AND ARGUMENT

Plaintiff, Middle East Forum has included two counts under federal and commonwealth laws for trade secrets violations. It has become apparent that Plaintiff is playing fast and loose with the truth. A trade secret by definition cannot exist in the public space. If the information is available on publicly accessible websites, it can never be claimed a trade secret. Defendant has presented ample evidence that there are numerous (too many to count) websites that are dedicated to reporting on Middle East Forum donors, donation amounts, time of donations and more. This is the same information that Middle East Forum has attempted to persuade is protected by trade secrets laws. In any trade secret case, the court must first determine whether there exists, in fact, a trade secret. Baxter Healthcare Corp. v. HQ Specialty Pharma Corp., 157 F. Supp. 3d 407 (D.N.J. 2016). Matters of public knowledge or information completely

disclosed by marketed goods cannot qualify as trade secrets. Baxter Healthcare Corp. v. HQ Specialty Pharma Corp., 157 F. Supp. 3d 407 (D.N.J. 2016). The subject of a trade secret must be secret and must not be of public knowledge or of general knowledge in the trade or business. Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 94 S. Ct. 1879, 40 L. Ed. 2d 315 (1974). To prevail on misappropriation of trade secrets claim under Pennsylvania Uniform Trade Secrets Act (PUTSA) and Defend Trade Secrets Act (DTSA), alleged trade secret must be particular to plaintiff and not to industry itself and must not be available through independent source such as customers. Ecosave Automation, Inc. v. Delaware Valley Automation, LLC, No. CV 20-5564, 2021 WL 1998708 (E.D. Pa. May 19, 2021). Extent of property right in a trade secret is defined by extent to which the owner of a secret protects his interest from disclosure to others' information that is public knowledge or that is generally known in an industry could not be a trade secret and if an individual discloses his trade secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publicly discloses the secret, his property right is extinguished. Ruckelshaus v. Monsanto Co., 467 U.S. 986, 104 S. Ct. 2862, 81 L. Ed. 2d 815 (1984). Competitor's alleged alteration of formulation of its genetically engineered human blood hormone after obtaining samples of drug manufacturer's hormone was not actionable misappropriation of manufacturer's trade secrets; competitor's change to its formulation was based on publicly available information and resulted from ten years of well-documented laboratory research. Merckle GmbH v. Johnson & Johnson, 961 F. Supp. 721 (D.N.J. 1997).

There is no legal basis for Middle East Forum to claim trade secret protections for information that is available on the many online properties dedicated to disclosure of MEF donors, donations amounts, and the wealth of information available on these websites. Any

person with five minutes and a smart phone can assemble a list that is almost identical (if not identical) to the list that Middle East Forum is attempting to base its case upon. Defendant requests the Court preclude Plaintiff from claiming trade secret protections for any donor that is listed on these public websites, as the very listing on the public site precludes a plaintiff from invoking trade secret protections.

IV. CONCLUSION

Based on the above arguments, Plaintiff should be precluded from claiming trade secret protections for any information that is available in the public space.

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DATED: November 11, 2021

CERTIFICATE OF SERVICE

I, Seth D. Carson, hereby certify that on this date the foregoing Motion in Limine has been electronically filed with the Court and is available for viewing and downloading from the ECF System and thereby have been served upon the following counsel of record, electronically:

TO:

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